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SERVICE DATE – DECEMBER 13, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35692

EASTSIDE COMMUNITY RAIL, LLC—ACQUISITION AND OPERATION
EXEMPTION—GNP RLY INC.

Docket No. FD 35730

BALLARD TERMINAL RAILROAD COMPANY, L.L.C.—LEASE EXEMPTION—
EASTSIDE COMMUNITY RAIL, LLC

Digest:¹ This decision denies Snohomish County's petitions to revoke the acquisition exemption of Eastside Community Rail, LLC, and the lease exemption of Ballard Terminal Railroad Company, L.L.C. The petitions are based on property, contract, and bankruptcy law issues that should be resolved by an appropriate court.

Decided: December 11, 2018

On July 12, 2018, Snohomish County, Wash. (the County), a noncarrier, filed petitions to revoke the exemption of Eastside Community Rail, LLC (ECR) to acquire and operate, and the exemption of Ballard Terminal Railroad Company, L.L.C. (Ballard) to lease, a 14.45-mile line of railroad known as the Eastside Corridor, which extends from milepost 23.8 in Woodinville, Wash., to milepost 38.25 in Snohomish, Wash. (the Line). The County claims ECR's and Ballard's verified notices contained materially false or misleading information about ECR's property interests in an easement over the Line and are therefore void ab initio. On August 7, 2018, Ballard filed a reply disclaiming any intent to misrepresent ECR's property interests in the Line. On August 14, 2018, Douglas Engle (Engle) submitted a late-filed comment, which he states is on behalf of ECR and in which he denies that the notices contained false or misleading information. As explained below, the Board will deny the County's petitions to revoke because they are based on claims concerning ECR's property interests in the Line that should be addressed by an appropriate court.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

BACKGROUND

The Line was previously owned by BNSF Railway Company (BNSF). On December 18, 2009, however, under the Board's line of precedent in Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad (State of Maine), 8 I.C.C.2d 835 (1991), BNSF sold the physical assets of the Line to the Port of Seattle (the Port); GNP RLY Inc. (GNP) acquired a permanent freight rail easement for the Line (the Easement) from BNSF; and GNP entered into an operations and maintenance agreement (the O&M Agreement) with the Port. (See Snohomish Cty. Pet., Stowe Decl. 5-6, Exs. 1, 11, 14.)² The Port later sold the physical assets of the Line between milepost 26.38 and milepost 38.25 to the County (the Snohomish Segment) and between milepost 23.8 and milepost 26.38 to the City of Woodinville (Woodinville) (the Woodinville Segment).³ See Snohomish Cty., Wash.—Pet. for Declaratory Order, FD 35830 (STB served Mar. 5, 2015); City of Woodinville, Wash.—Pet. for Declaratory Order, FD 35905 (STB served Oct. 7, 2015).

On or about January 24, 2011, Engle signed a deed (the January 2011 Deed) purporting to transfer the Easement from GNP to Earl Engle and Joanne Engle. (Snohomish Cty. Pet., Stowe Decl., Ex. 2; Engle Comment 3, 5, Aug. 14, 2018, FD 35692.) No Board authority was sought or obtained for this transfer. According to the County, at the time of the purported transfer, GNP was owned in equal parts by Engle, who was the chief financial officer and treasurer, and Thomas Payne, who was the chief operations officer and chairman. (Snohomish Cty. Pet., Stowe Decl., Ex. 4 at 39.) On January 26, 2011—two days after Engle conveyed the Easement to Earl Engle and Joanne Engle—Mr. Payne apparently terminated Engle's employment at GNP. (Snohomish Cty. Pet. 10-11.)

On February 2, 2011, several creditors sued GNP in the U.S. Bankruptcy Court for the Western District of Washington (the Bankruptcy Court).⁴ Despite having executed agreements purporting to convey the Easement to Earl Engle and Joanne Engle in the January 2011 Deed, in a sworn declaration dated February 10, 2011 that was filed with the Bankruptcy Court the next day, Engle described the Easement as a current asset of GNP. (Snohomish Cty. Pet., Stowe Decl., Ex. 8 at 118, 126.) In similar declarations filed with the Bankruptcy Court, Earl Engle and Joanne Engle stated that they were current creditors of GNP and made no mention of their purported acquisition of the Easement. (Id. at Stowe Decl., Ex. 3.)

² The County's petition in Docket No. FD 35730 incorporates its entire petition submitted in Docket No. FD 35692. All page references to the County's petition are to the filing in Docket No. FD 35692.

³ Woodinville is located in King County, south of Snohomish. The municipal border between the counties is at milepost 26.38. (Snohomish Cty. Pet., Stowe Decl. 5, Ex. 12 at 278.)

⁴ A petition for involuntary bankruptcy was filed in the Bankruptcy Court by Ballard, Marketing Philharmonic, LLC, and San Clemente Technical Company. Earl Engle, Joanne Engle, and Northwest Signal and Maintenance, LLC joined the petition. (Snohomish Cty. Pet., Stowe Decl., Ex. 4 at 38.)

On September 5, 2012, GNP's bankruptcy trustee and Engle, as ECR's manager, entered into an agreement for ECR to purchase the assets of GNP (the Asset Purchase Agreement), which purportedly included the Easement. (Snohomish Cty. Pet., Stowe Decl., Ex. 5 at 63, 70-71; Engle Comment, Ex. 2, Sept. 21, 2018, FD 35692.) On September 27, 2012, the Bankruptcy Court approved the agreement to transfer GNP's assets to ECR under federal bankruptcy law. (Snohomish Cty. Pet., Stowe Decl., Ex. 4.)

On November 7, 2012, ECR filed with the Board a verified notice of exemption under 49 C.F.R. § 1150.31 for authority to acquire the Line from GNP and operate it. (ECR Notice, Nov. 7, 2012, FD 35692.) In its notice, ECR stated it would purchase "all of the GNP RLY assets and operating agreements," which it stated included the Easement. (*Id.* at 4, 7.) Notice of the exemption was served and published in the Federal Register on November 23, 2012 (77 Fed. Reg. 70,206). The exemption became effective on December 7, 2012. ECR closed on its acquisition of GNP's assets on December 17, 2012. (Snohomish Cty. Pet., Stowe Decl., Ex. 5 at 71; Engle Comment, Ex. 2, Sept. 21, 2018.)

In the spring of 2013, Ballard filed with the Board a verified notice of exemption under 49 C.F.R. § 1150.41 for authority to lease the Line (i.e., the Easement) from ECR and operate it. (Ballard Notice, Apr. 2, 2013, FD 35730.) In its notice, Ballard stated that ECR acquired the Easement "pursuant to an Asset Purchase Agreement with the Bankruptcy Trustee for the bankrupt GNP RLY, Inc." (Ballard Notice 3.) Notice of the exemption was served and published in the Federal Register on April 18, 2013 (78 Fed. Reg. 23,331). The exemption became effective on May 2, 2013. (*Id.*)

In its 2018 petitions to revoke ECR's and Ballard's exemptions, the County claims that ECR's and Ballard's verified notices are void ab initio under 49 C.F.R. §§ 1150.32(c) and 1150.42(c) because they falsely stated that ECR had acquired the Easement from GNP, when in fact the Easement was conveyed to Earl Engle and Joanne Engle in the January 2011 Deed prior to the purported bankruptcy acquisition by ECR. (Snohomish Cty. Pet. 4-5, 16.) In support of its position, the County provides evidence that the January 2011 Deed was recorded in Snohomish County on January 25, 2011. (*Id.* at 10-11, Stowe Decl., Ex. 2.) The County argues that because this transfer occurred prior to the bankruptcy filing, there was no property interest for GNP to transfer pursuant to the bankruptcy proceeding and, therefore, ECR never received any deed for the Easement. (*Id.* at 11-12.) The County, depending on the outcome of this proceeding, states it "would seek to 'railbank' [the Snohomish Segment] pursuant to 16 U.S.C. [§] 1247(d) for both rail and trail purposes" or "to address rail shipper needs (through a 'modified certificate' operator under 49 C.F.R. [§] 1150.21, et seq.)" (Snohomish Cty. Pet. 17.)⁵

⁵ The County explains that its motivation in seeking revocation is due, in part, to a series of ongoing disputes with ECR and Ballard. Specifically, the County describes a situation in which Engle has purportedly rented portions of the Line for parking spaces over the County's objection; claims that ECR is not carrying insurance, as required by the O&M Agreement; claims that Ballard is delinquent in rental payments that are required by the O&M Agreement; and expresses concern that ECR and Ballard are allowing the Snohomish Segment to fall into a

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In response, Engle claims that the Easement was sold to Earl Engle and Joanne Engle in January 2011, but that they conveyed it back to GNP in October 2011 before the Asset Purchase Agreement was executed. (Engle Comment 3, 5, Aug. 14, 2018.) Engle includes copies of the transaction documents, including a deed that does not appear to be fully executed, with his filing (the October 2011 Documents). (Id. at Ex. 2.) Therefore, Engle argues, the notices to the Board were materially accurate and are not void. (Id. at 3.)

However, in his filing, Engle also states that “[i]n October 2017, [Earl Engle] and I sold the freight easement to NW Signal, who has been the signal maintainer for the line for the past 9-years, while I maintain the passenger rights.” (Id. at 6.) Engle also includes a copy of the purported quitclaim deed conveying the Easement to NW Signal as an exhibit, though he notes without explanation that the transfer is “pending completion.”⁶ (Id. at 4, Ex. 4.)

Ballard filed its response in each docket, stating that it did not intentionally make any misrepresentations concerning ownership of the Easement and, until the County’s petitions to revoke, was unaware of any question regarding ownership of the Easement. (Ballard Reply 2-3, Aug. 7, 2018, FD 35692; Ballard Reply, Ex. 1 at 2-3, Aug. 22, 2018, FD 35730.). According to the County, there are approximately three shippers remaining on the Line who receive service from Ballard. (Snohomish Cty. Pet. 14.) Ballard states that it is willing to continue to provide service, “subject to obtaining sufficient financial assistance to repair and maintain the trackage[;]” without such financial assistance, however, it requests that it “be released from any common carrier obligations” on the Line by the Board. (Ballard Reply 2, Aug. 7, 2018; Ballard Reply, Ex. 1 at 2, Aug. 22, 2018.)

On August 1, 2018, Woodinville filed petitions to intervene in both dockets, taking no position on the County’s petitions to revoke but explaining that the Woodinville Segment’s only direct connection to the national rail network is via the Snohomish Segment. (Woodinville Pets. 3.) As a result, Woodinville asserts that “[a]bandonment or discontinuation of rail service in Snohomish would force abandonment or discontinuation in Woodinville, and would affect the City’s property rights in the rail corridor.” (Id.)

On August 29, 2018, the County filed a reply to Engle’s comment. The County argues, among other things, that in his comment, Engle “appears to admit that ECR lacks title, in that Engle attaches a deed by which he and [Earl Engle] purport to convey a portion of the easement in King County to NW Signal in 2017.” (Snohomish Cty. Reply 2, FD 35692.) The County also argues that the deeds that Engle provides in support of his arguments are defective. (Id. at 3.)

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state of disrepair. (Snohomish Cty. Pet. 14-21.) Engle and Ballard dispute some of the County’s allegations. Because these issues are not relevant to the decision here, the Board will not address them.

⁶ Engle also makes a vague reference to the fact that in 2015, Joanne Engle conveyed “‘all [railway] property interests’ to [him].” (Engle Comment 4, Aug. 14, 2018.) It is unclear to what interests this statement refers.

As such, the County reasserts that ECR does not have title to the Easement and that the Board should revoke ECR's and Ballard's authorities. (Id. at 5.)

On September 4, 2018, Northwest Signal and Maintenance, LLC (NW Signal) filed a comment to correct certain statements in Engle's August 14, 2018 comment. (NW Signal Comment 1, FD 35692.) Most notably, NW Signal confirms the purported transfer of the Easement from Engle and Earl Engel to NW Signal, though it points out that the transfer occurred in December 2017, not October 2017 as stated by Engle. (Id. at 2.) It is unclear from the record which section of the Easement NW Signal purports to have purchased.⁷ However, it appears to have purchased a portion of the segment over which Ballard currently holds operating authority.⁸ Ballard Terminal R.R.—Lease Exemption—Line of Eastside Cmty. Rail, FD 35730, slip op. at 1 (Apr. 18, 2013). (See also Engle Comment, Ex. 8 at 1, Aug. 14, 2018 (lease agreement dated 2013 between Ballard and ECR).)

Also on September 4, 2018, King County submitted a filing stating that it is concerned because, like the City of Woodinville, King County is the trail sponsor for other railbanked corridors whose only connection to the interstate rail network is through the Line. (King Cty. Reply 2, Sept. 4, 2018.) King County asks the Board to ensure “that any relief provides ample opportunity, through railbanking or otherwise, to avoid abandonment of the [Line] and [to] preserve the current connection from the Line to the interstate rail system.” (Id.) On September 7, 2018, the National Association of Reversionary Property Owners (NARPO) filed a comment arguing, among other things, that King County is not preserving railbanked corridors to the south of the Line in a manner that would allow for them to be reactivated for rail service and asking the Board to investigate.⁹ (NARPO Comment 2.)

⁷ NW Signal states that it purchased the “freight easement” on December 18, 2017. (NW Signal Comment 1, FD 35692.) The “Proposed Term Sheet” submitted by Engle details that the agreement was for purchase of the wye in Woodinville, running rights for the wye and 1.2 miles of mainline track, and “the balance of [ECR's] real property and assets in the Woodinville Subdivision . . . upon STB approval of this transaction.” (Engle Comment, Ex. 6 at 1, Sept. 21, 2018.)

⁸ The quitclaim deed for purchase of a “Reserved Freight Easement” purports to transfer ownership of a “Portion of [the] Woodinville Freight Easement.” (Engle Comment, Ex. 4 at 1, Aug. 14, 2018 (quitclaim deed purporting to transfer a portion of the Woodinville Freight Easement and describing that property by referencing “Exhibit A,” which was not attached); Engle Comment 2, Sept. 21, 2018 (explaining that Exhibit A is the quitclaim deed from BNSF to GNP attached to Exhibit 1 to the County's petition).) This appears from the record to be the segment between milepost 23.8 and milepost 38.25. (County Pet., Stowe Decl., Ex. 1 at 3, 5 (quitclaim deed from BNSF to GNP describing the “Woodinville Freight Easement” as extending from milepost 23.8 to milepost 38.25).)

⁹ The Board will deny NARPO's request because, as NARPO notes, it concerns a segment of rail line not at issue in these dockets.

Lastly, on September 21, 2018, Engle filed a reply to the various replies to his August 14 reply. See 49 C.F.R. § 1104.13(c). In response to assertions that the October 2011 Documents include deeds that are not fully executed, he claims that it was the responsibility of his former partner at GNP to record the Easement. (Engle Comment 2, Sept. 21, 2018.) Engle makes a similar argument regarding the deed conveying the Easement to NW Signal, stating that it is NW Signal that needs to register the deed. (Id.)

PROCEDURAL MATTERS

The Board received a number of replies to replies and late-filed submissions in these proceedings. In both dockets, Ballard and NARPO late-filed their submissions, and King County filed a reply to a reply. In Docket No. FD 35692, Engle and NW Signal late-filed their submissions, and the County and Engle each filed a reply to a reply. In the interests of having a more complete record, the Board will accept into the record the late-filed submissions and the replies to replies from the County, Engle, Ballard, King County, NW Signal, and NARPO.

As noted above, Woodinville submitted petitions to intervene, which the Board will also grant.

On August 6, 2018, after ECR failed to respond to the County's petitions to revoke, the County filed a request for a default order against ECR. On August 23, 2018, Woodinville filed a reply in support of the County's request for a default order in Docket No. FD 35692. Because, as we explain below, the County's petition on its face raises questions of ownership under state contract and property law and federal bankruptcy law that are better resolved first in the appropriate courts, the Board will deny the County's motion for a default order.

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. pt. 1150 subparts D and E—Exempt Transactions, an exemption is void ab initio if (1) the verified notice contains false or misleading information (by assertion or omission), and (2) the false or misleading information is material. See 49 C.F.R. §§ 1150.32(c), 1150.42(c); Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016); Union Pac. R.R.—Aban.—in Harris, Fort Bend, Austin, Wharton, & Colo. Ctys., Tex., AB 33 (Sub-No. 156) et al., slip op. at 6-7 (STB served Jan. 8, 2016). Information is material to an exemption if the transaction would not have otherwise qualified for the exemption. See Ohio River Partners LLC, FD 35984, slip op. at 3 (citing Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995)). The party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information. See Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Ctys., Iowa, FD 34867, slip op. at 4 (STB served June 15, 2007).

In this case, the County's petitions to revoke allege that ECR's and Ballard's verified notices contain false and misleading information because GNP did not own the Easement at the time it entered into the Asset Purchase Agreement with ECR and, therefore, ECR could not acquire it from GNP as represented to the Board. (Snohomish Cty. Pet. 4-5, 16.) The County asserts that this material misrepresentation regarding ownership of the Easement renders both

ECR's and Ballard's exemptions void ab initio. (*Id.*) Engle and Ballard do not dispute that the question of the Easement's ownership is material to the exemptions. (Engle Comment 3, Aug. 14, 2018; Ballard Reply 2-3, Aug. 7, 2018.) Instead, Engle disputes the County's assertion that GNP, and later ECR, did not own the Easement at the relevant times, in order to ultimately lease it to Ballard. (Engle Comment 3, Ex. 2, Aug. 14, 2018.)

Thus, the petitions to revoke turn on whether, in fact, GNP owned the Easement when ECR filed its verified notice for authority to acquire it and whether, thereafter, ECR owned the Easement when Ballard filed its verified notice for authority to lease it. As explained above, the County claims that at the time ECR filed its verified notice to acquire the Easement from GNP, GNP did not have sufficient interest in the Easement to transfer it to ECR because GNP had transferred it to Earl Engle and Joanne Engle just prior to entering involuntary bankruptcy. The County provides support that this transfer occurred from an outside title examiner and its own research. (See *Snohomish Cty. Pet.* 5.) However, Engle claims that Earl Engle and Joanne Engle transferred the Line back to GNP via the October 2011 Documents before the bankruptcy proceedings concluded. (Engle Comment 3, Aug. 14, 2018.) Engle provides copies of these documents, but the deeds do not appear to be fully executed. (*Id.* at Ex. 2.) In addition, these purported transfers all occurred several days prior to or during the GNP bankruptcy proceeding, which may have impacted the validity of the transactions under bankruptcy rules. *See, e.g.*, 11 U.S.C. § 547 (permitting the bankruptcy trustee to avoid certain transfers).

It is clear from these facts that the questions that must be resolved to determine whether the notices of exemption were false or misleading involve questions of ownership, which in turn involve issues of state property and contract law and federal bankruptcy law. The Board has repeatedly held that disputes concerning property and contract law should be decided by appropriate courts.¹⁰ Specifically, the question of regulatory authority under the Interstate Commerce Act is separate from whether the relevant parties have the necessary state law property interests or contractual rights to act on the authority granted by the Board. *See Lackawanna Cty. R.R. Auth.—Acquis. Exemption—F&L Realty, Inc.*, FD 33905 et al., slip op. at 6 (STB served Oct. 22, 2001). That is because the Board's grant of authority is permissive—

¹⁰ *See Gen. Ry.*, FD 34867, slip op. at 4-5 (denying a petition to revoke an exemption based on a contract dispute because questions of contract interpretation are better addressed by an appropriate court); *Allied Indus. Dev. Corp.—Pet. for Declaratory Order*, FD 35477, slip op. at 5 (STB served Sept. 17, 2015) (explaining that “the Board generally leaves questions of state property law to state courts because they have the necessary expertise.”). *See also Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC*, FD 35984 et al., slip op. at 6 (STB served Dec. 22, 2017) (denying a request as “premature” pending a court's determination whether the parties had obtained a sufficient property interest under state law to exercise the previously-granted operating authority); *V&S Ry.—Pet. for Declaratory Order—R.R. Operations in Hutchinson, Kan.*, FD 35459, slip op. at 7 (STB served July 12, 2012) (questions about property rights should be decided by the district court applying state property and contract law); *Allegheny Valley R.R.—Pet. for Declaratory Order—William Fiore*, FD 35388, slip op. at 3-4 (STB served Apr. 25, 2011) (questions concerning size, location, and nature of property rights are best addressed by a state court).

whether the parties have regulatory authority to acquire or operate over a certain segment of track is different from the question of whether that party (or parties) have the necessary property interest or contractual right to exercise that authority. As such, the determination of whether the parties have the necessary right to exercise Board authority is a question for a court with expertise in state contract and property law, and federal bankruptcy law. See Gen. Ry., FD 34867, slip op. at 4; Lackawanna Cty., FD 33905 et al., slip op. at 6. Without resolution of the ownership issues, the Board cannot determine whether the verified notices contained false or misleading information. Accordingly, at this time, the Board will deny the County's petitions to revoke. However, the Board's decision is without prejudice to any party that wishes to file a future petition to revoke once the questions of ownership have been resolved.

Nevertheless, several of the actions described in this record are troubling and must be addressed. First are the actions of Engle. There are several instances described in the record here that, even when viewed in the best possible light, demonstrate a disregard for the Board's regulatory process.¹¹ Also concerning is the fact that it appears that there were several conveyances of the Easement for which parties did not seek or obtain the needed Board authority pursuant to §§ 10901-10902. Parties and practitioners alike are reminded that any acquisition, change in operator, discontinuance, or abandonment of a rail line in the national network requires prior Board authorization through the appropriate application or exemption process. 49 U.S.C. §§ 10901-10903. See Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—Great Walton R.R. in Hart Cty., Ga., AB 1242, slip op. at 3 (STB served Aug. 31, 2017).¹² Here, any party that has purported to acquire or is contemplating acquiring a property interest in the Easement, but has not received Board authorization for the transaction, must seek and obtain Board authorization for any such transaction to be valid.¹³ Repeated disregard for statutory and regulatory requirements will lead to increased scrutiny of future filings by those entities or their affiliates. See, e.g., Norfolk S. Ry.—Aban. Exemption—in Norfolk & Va. Beach, Va., AB 290 (Sub-No. 293X), slip op. at 8 (STB served Nov. 6, 2007), pet. for review dismissed sub nom. Riffin v. STB, No. 07-1483 (D.C. Cir. Apr. 22, 2009). Further, it is well-settled that administrative agencies have inherent authority to protect the

¹¹ In addition to the conduct described in this record, an exhibit in another proceeding, dated one month before ECR filed its verified notice, depicted the Easement as owned by Telegraph Hill Investments and leased by ECR. See King Cty. Comment Exhibits, Ex. 26 at 18, Oct. 17, 2013, BNSF Ry.—Aban. Exemption—in King Cty., Wash., AB 6 (Sub-No. 465X) et al. According to the County, Telegraph Hill Investments was governed by Engle and Joanne Engle before it was administratively dissolved. (Snohomish Cty. Pet., Stowe Decl. 4-5, Ex. 10.)

¹² Questions as to whether a transaction requires Board authority may be directed to the Board's Rail Customer and Public Assistance (RCPA) office, which provides informal assistance to the public on a wide range of matters within the Board's expertise. The RCPA office can be reached by telephone at 866-254-1792, fax at 202-245-0461, or email at rcpa@stb.gov.

¹³ Board authority permits parties to consummate an acquisition transaction when they have the legal capacity to do so; however, such authority is not a determination concerning the ownership of the property involved in the transaction. See Allegheny Valley R.R., FD 35388, slip op. at 4 n.4; Gen. Ry., FD 34867, slip op. at 4.

integrity of the regulatory processes that they are charged with administering, and to prevent or remedy a misuse of those processes. See ICC v. Am. Trucking Ass’n, 467 U.S. 354, 364–66 (1984).

With respect to Ballard’s request that, absent financial assistance, it “be released from any common carrier obligations, if any, it may hold . . . and those obligations be assigned to the County and City of Woodinville,” Ballard’s request is irrelevant to the Board’s resolution of the petitions to revoke and has not been properly raised before the Board. (Ballard Reply 2, Aug. 7, 2018; Ballard Reply, Ex. 1 at 2, Aug. 22, 2018.) The Board again notes that any change in operator or discontinuance of a rail line in the national network requires prior Board authorization through the appropriate application or exemption process. 49 U.S.C. §§ 10901-10903.

Finally, in his comment, Engle states that he is waiting for the O&M Agreement to expire so he can pursue other business opportunities on the Line, including the introduction of passenger excursion service. (Engle Comment 4-5, 12-13, 15-18, Aug. 14, 2018.) Engle requests that the Board terminate the O&M agreement with the Port prior to its expiration “to support railway efforts to make the railroad viable again[.]” (Id. at 17-18.) Given the Board’s concerns over Engle’s conduct, as well as the fact that his request is not relevant to the Board’s resolution of the petitions to revoke, the Board will deny this request. In addition, Engle is cautioned that, even after the expiration of an operating agreement, the service obligation and operating rights that have been approved by the Board remain in effect until the Board either approves a new transfer of that obligation and those rights or permits discontinuance. See, e.g., Commuter Rail Div. of the Reg’l Transp. Auth.—Pet. for Declaratory Order—Status of Chi. Union Station, FD 36171, slip op. at 5 (STB served Aug. 22, 2018); Ark. & Mo. R.R. v. Mo. Pac. R.R., 6 I.C.C.2d 619, 622 (1990). Thus, unless and until the Board revokes or otherwise terminates ECR’s and Ballard’s Board authority to operate over the Line, Engle may not take any action that unreasonably interferes with the use of the Line for freight rail service.

It is ordered:

1. In FD 35692 and FD 35730, the County’s petitions to revoke are denied without prejudice.
2. In FD 35692 and FD 35730, Woodinville’s petitions to intervene are granted.
3. In FD 35692, the County’s request for a default order is denied.
4. All filings to date in FD 35692 and FD 35730 are accepted in the record.
5. The request for an investigation by NARPO is denied.
6. This decision is effective on its service date.

By the Board, Board Members Begeman and Miller.